

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 164 of 1997

in

SPECIAL CIVIL APPLICATION No 8665 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BALUBHAI A DUDHAT

Appearance:

MR DA BAMBHANIA for Petitioners
MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 10/09/97

ORAL JUDGEMENT

Admitted. Mr.I.M.Pandya for Mr.Y.S.Lakhani,

waives service of notice of admission. In the facts and circumstances of the case the matter is taken up for final hearing to day.

This appeal is directed against an interim order passed by the learned Single Judge on January 28, 1997 in Special Civil Application No. 8665 of 1996.

The respondent is in original petitioner. He filed the above petition against an order of reversion, dt. October 23, 1996 from the post of Assistant Government Labour Officer to the post of Clerk-cum-Typist on the ground that he was declared as surplus vide letter dt. February 27, 1981 and then absorbed in the Labour Department by way of re-allocation on March 3, 1981. So far as this factual position is concerned, it is not disputed. The contention raised by the petitioner was that as soon as he was declared as surplus and relieved from one Department, he was taken in other Department on the same day and there was no actual break in service. According to him, therefore, it could not be said that he was treated as surplus and reallocated thereafter, and hence he could not get seniority from the date of initial appointment. The case of the Government, on the other hand, was that once a person is declared as surplus and was re-allocated to other Department, he would get seniority below the last employee in that Department.

The main matter is pending for final hearing. From the record, it clearly appears that the action of reversion was taken in view of the fact that the petitioner was treated as junior to employees in Labour Department. It, therefore, can be said that interim mandatory relief ought not to have been granted in favour of the petitioner after he was reverted. Hence, without observing anything on merits, this Letters Patent Appeal is allowed. An order passed by the learned Single Judge granting mandatory relief is set aside. The learned Single Judge will now decide the main matter i.e. Special Civil Application No. 8665 of 1996 on its own merits without influenced by the observations made in his order dt. January 29, 1997 in the present judgment. LPA is accordingly disposed of. No order as to costs.

Learned counsel for the respondent-original petitioner is at liberty to request the learned Single Judge to take the matter for expeditious hearing. As and when such request is made, learned Single Judge will

decide the same taking into account the facts and
circumstances of the case.

Dt. 10.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)